

No. 12612

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In the  
United States  
Court of Appeals  
For the Ninth Circuit

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ERWIN P. WERNER,

*Appellant,*

vs.

UNITED STATES OF AMERICA,

*Appellee.*

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Appellant's Closing Brief

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ERWIN P. WERNER,  
5611 Carlton Way, Los Angeles 28,  
*Appellant, In Pro. Per.*

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**Appellant's Closing Brief**

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This is an action for money, or compensation, for use and occupation of land. An original lease is referred to in the complaint to show:

- (a) How the government first came into possession of the land here in question.
- (b) To show title in the plaintiff.
- (c) To establish the date from which the plaintiff in this action is entitled to reasonable compensation for the use of his land.

The plaintiff asks no right which grows out of the original lease.

Reformation in the second cause of action is asked in order to interpret the following language which terminated the lease on the land in question, to wit:

“and provided further that this lease shall in no event extend beyond six months from the date of the termination of the unlimited emergency, as declared by the President of the United States on May 27th, 1941.”

Whether reformation is the proper remedy or not, the above language must be interpreted by the court in order to determine when compensation for the use of the land in question started after termination of the unlimited emergency.

The court below erroneously held that both causes of action are barred because the original lease was executed on the 31st day of May 1943.

The date of the execution of the lease has nothing to do with either cause of action other than to identify the lease as of the date mentioned.

Is it possible that the second cause for compensation is barred because the original lease was executed in 1943? All the rentals or compensation claimed accrued immediately before the filing of the complaint.

In our opening brief we contended that the emergency referred to in the proclamation of 1941, is a pure question of fact and could not be terminated by a subsequent proclamation or even an Act of Congress unless

both parties agreed thereto in the original lease of May 31st, 1943.

But there is no such agreement or provision in the lease which is referred to in the plaintiff's complaint.

Therefore the only question is a judicial one to wit: When did the threat to the security of the United States cease by the "axis Belligerents"?

The attorney general claims in his reply brief that the threat to the security of the United States cannot cease until either the President by proclamation or Congress by appropriate legislation says so.

Again we say we did not so contract.

The defendant in support thereof cites a statement issued contemporaneously with the proclamation of December 31st, 1946 and further cited *Wood v. Miller*, 333 U. S. 141. But a careful examination will reveal that they support the plaintiff's position in this matter.



## WAR POWER IS NOT INVOLVED

This case involves the relation of two contracting parties and does not bring into play the war powers of the government. After reading Woods, *supra*, it will become clear that the court wished that the interpretation of its decision be not extended and that it went no further than granting power to Congress to deal with those matters or evils which were caused by or grew out of the war. The defendant makes the following exaggerated statement (Br. 9):

“This unlimited emergency has not been terminated except as to certain specific statutory provisions listed in the Act of July 25th, 1947.”

The plaintiff and defendant in this action agreed in writing as to the termination of their rights under the lease and the President by proclamation and Congress by legislation was impotent to alter those rights agreed upon. Their respective rights became vested. This court alone has the right and power to determine what was meant by the phrase “termination of the unlimited emergency.”

However Woods, *supra*, and the statement of December 31st, 1946, was never intended to include the private dealings of citizens in their business affairs and was meant to extend to legislation by Congress which specifically was made to come to an end by the presidential proclamation, and to those war powers



dealing with conditions brought about by the war. Justice Jackson specifically said that unless based on constitutional authority war power should not be extended to affect personal and property rights.

Justice Jackson in his concurring opinion in *Woods*, *supra*, summarizes our position so well that we make it part of our argument.

*Wood v. Miller*, 333 U. S. 138 at page 146:

“Mr. Justice Jackson concurring.

I agree with the result in this case, but the arguments that have been addressed to us lead me to utter more explicit misgivings about war powers than the court has done. The government asserts no constitutional basis for this legislation other than this vague undefined and undefinable ‘war power.’

No one will question that this power is the most dangerous one to free government in the whole catalogue of powers. It usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by judges under the same influences and passions and pressures. Always as in this case, the Government urges hasty decision to forestall some emergency or serve some purpose and pleads that paralysis will result if its claims to power are denied or their confirmation delayed.

Particularly when the war power is invoked

to do things to the liberties of the people, or to their property or economy that only indirectly affect conduct of the war and do not relate to the management of the war itself, the constitutional basis should be scrutinized with care.

I think we can hardly deny that the war power is as valid a ground for federal rent control now as it has been at any time. We still are technically in a state of war, I would not be willing to hold that war powers may be indefinitely prolonged merely by keeping legally alive a state of war that had in fact ended. I cannot accept the argument that war powers last as long as the effects and consequences of war, for if so they are permanent as the war debts. . . . ”

We therefore submit the order of the lower court be reversed and the defendant be compelled to file his answer forthwith.

Respectfully submitted,

ERWIN P. WERNER,

*In Pro. Per.*